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17 IN THE UNITED STATES DISTRICT COURT
18
19 EASTERN DISTRICT OF CALIFORNIA

20
21 UNITED STATES OF AMERICA,

22 Plaintiff,

23 v.

24 ADRIAN PEREZ,

25 Defendant.

26 CASE NO. 1:20-CR-00133-NONE-SKO

27 STIPULATION REGARDING EXCLUDABLE
28 TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: October 7, 2020

TIME: 1:00 p.m.

COURT: Hon. Sheila K. Oberto

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28 This case is set for status conference on October 7, 2020. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency, were entered to address public health concerns related to COVID-19.

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28 Although the General Orders and declarations of emergency address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

1 A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
2 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
5 findings on the record "either orally or in writing").

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
10 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
11 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
13 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
15 18 U.S.C. § 3161(h)(7). Although the Speedy Trial Act does not directly address continuances
16 stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a
17 continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice
18 continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981).
19 The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also*
20 *United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
21 following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus
22 is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory
23 rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7).² If continued, this Court should designate a new date for the status
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28 ² The parties note that General Order 612 acknowledges that a district judge may make
"additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
2 continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for status on October 19, 2020.

7 2. Due to a change in court calendars and scheduling, the court advanced the status
8 conference to October 7, 2020.

9 3. By this stipulation, defendant now moves to continue the status conference until
10 November 18, 2020, and to exclude time between October 7, 2020, and November 18, 2020, under 18
11 U.S.C. § 3161(h)(7)(A), B(iv).

12 4. The parties agree and stipulate, and request that the Court find the following:

13 a) The government has represented that the discovery associated with this case
14 includes investigative reports and lengthy video footage. All of this discovery has been either
15 produced directly to counsel and/or made available for inspection and copying.

16 b) Counsel for defendant desires additional time to review discovery in this matter
17 and to conduct investigation and research related to the charges; at the time of this filing, only
18 two weeks have elapsed since the filing of the prior stipulation in this matter.

19 c) Counsel for defendant believes that failure to grant the above-requested
20 continuance would deny her the reasonable time necessary for effective preparation, taking into
21 account the exercise of due diligence.

22 d) The government does not object to the continuance.

23 e) Based on the above-stated findings, the ends of justice served by continuing the
24 case as requested outweigh the interest of the public and the defendant in a trial within the
25 original date prescribed by the Speedy Trial Act.

26 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
27 et seq., within which trial must commence, the time period of October 7, 2020 to November 18,
28 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it

1 results from a continuance granted by the Court at defendant's request on the basis of the Court's
2 finding that the ends of justice served by taking such action outweigh the best interest of the
3 public and the defendant in a speedy trial.

4 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
6 must commence.

7 IT IS SO STIPULATED.

8 9 Dated: October 1, 2020

McGREGOR W. SCOTT
United States Attorney

10 11 /s/ LAURA JEAN BERGER
LAURA JEAN BERGER
12 Assistant United States Attorney

13 14 Dated: October 1, 2020

/s/ ALEKXIA TORRES-
STALLINGS
ALEKXIA TORRES-
STALLINGS
15 Counsel for Defendant
16 ADRIAN PEREZ

17 18 **FINDINGS AND ORDER**

19 20 IT IS SO ORDERED.

21 22 Dated: October 2, 2020

/s/ Sheila K. Oberlo
UNITED STATES MAGISTRATE JUDGE